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Memorando de Acuerdo

MEMORANDUM OF AGREEMENT

**BETWEEN THE UNITED STATES NAVY AND THE PUERTO RICO STATE
HISTORIC PRESERVATION OFFICER**

**CONCERNING THE DISPOSAL OF DEPARTMENT OF DEFENSE
PROPERTIES AT NAVAL STATION ROOSEVELT ROADS, PUERTO RICO**

December 15, 2006

WHEREAS, the United States Department of Defense Appropriations Act of Fiscal Year 2004 (Public Law 108-87) directed the U.S. Navy to close the Naval Station Roosevelt Roads (NSRR) in Ceiba, Puerto Rico and dispose of NSRR (Undertaking) under the procedures and authorities contained in the Base Closure and Realignment Act of 1990 (Title XXIX of Public Law 101-510; 10 U.S.C. 2687 note); and

WHEREAS, the U.S. Navy, pursuant to Public Law 108-87 on March 31, 2004 closed NSRR and re-designated it as Naval Activity Puerto Rico (Property); and

 **WHEREAS**, the U.S. Navy has established the Undertaking's area of potential effect (APE), as defined at 36 C.F.R. § 800.16(d), as the disposal area which consists of the entire property exclusive of the area to remain under Federal control as shown on Exhibit A; and

WHEREAS, the U.S. Navy proposes to transfer portions of the property through Economic Development Conveyance and Public Benefit Conveyance, and offer for sale the remaining tracts of lands as identified in Exhibit A; and

WHEREAS, the U.S. Navy intends to convey approximately 3,300 acres to the Puerto Rico Department of Natural and Environmental Resources (DNER) through a Public Benefit Conveyance (PBC). The proposed parcels for conveyance to DNER are shown as "Conservation" in Exhibit A. The PBC will be sponsored by the U.S. Department of Interior under the authority of 40 USC 550 (Federal Property and Administrative Services Act). It is the intention of DNER to have these properties managed by the Conservation Trust of Puerto Rico; and

WHEREAS, the designated Local Reuse Authority for the former Naval Station Roosevelt Roads and DNER are invited to be consulting parties in this MOA in accordance with 36 CFR§ 800.2(c); and

WHEREAS, the U.S. Navy has determined that the Undertaking has the potential to adversely affect architectural resources within the APE, which the Navy and the Puerto Rico State Historic Preservation Officer (SHPO) have agreed meet the criteria for inclusion on the National Register of Historic Places (NRHP), consisting of structures and facilities as identified in Exhibit B; and

WHEREAS, the U.S. Navy and the SHPO agree that these architectural resources have been adequately recorded through existing reports and photographic documentation and copies of this documentation will be provided to the SHPO and DNER as stipulated in Exhibit C; and

WHEREAS, the U.S. Navy and the SHPO have agreed, based on the fieldwork and recommendations contained in the Archaeological reports database reviewed by the SHPO, that all reports were completed in accordance with the *Secretary of the Interior's Standards and Guidelines for Archaeological and Historic Preservation* (48 FR 44 738-9), conducted by R. Christopher Goodwin Associates, Inc. and Geo Marine, Inc. between 1993 and 2005, and based on the findings of those reports as displayed in Exhibit D that sites GMI-2, GMI-4 and RR-14 require data recovery; sites Ceiba 1, Ceiba 3, Ceiba 5, Ceiba 6, Ceiba 9, Ceiba 10, Ceiba 11 and RR-12 require additional survey to determine eligibility by the U.S. Navy; and

WHEREAS, the U.S. Navy has concluded and the SHPO concurs that the archaeological resources located within the property to be transferred to other Federal Agencies as identified in Exhibit D will be afforded protection by such agencies; and

WHEREAS, the U.S. Navy has determined and the SHPO has concurred that the Undertaking has the potential to adversely affect archaeological resources in eight sites potentially eligible for the NRHP that are located within the parcels proposed for sale, as shown on Exhibit A and identified in Exhibit D; and

WHEREAS, the U.S. Navy has consulted with the SHPO in accordance with Section 106 of the National Historic Preservation Act (16 U.S.C. §§ 470, et seq. (NHPA)) and its

implementing regulations (36 C.F.R. Part 800) to resolve any potential adverse effects of the Undertaking on architectural and archaeological resources; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the U.S. Navy has notified the Advisory Council on Historic Preservation (ACHP) of its findings of potential adverse effects and provided documentation about the findings on May 11, 2006, and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii) via letter dated June 6, 2006; and

WHEREAS, the U.S. Navy has provided for public involvement in this MOA in accordance with 36 C.F.R. § 800.8(c)(1)(iv) by coordinating the Section 106 review with public review and consultation under the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (1969) (NEPA).

NOW, THEREFORE, the U.S. Navy and the SHPO agree that upon the U.S. Navy's decision to proceed with the Undertaking, the U.S. Navy shall ensure that the following stipulations are implemented to mitigate any potential adverse effects of the Undertaking on architectural or archaeological resources, and that these stipulations shall govern the Undertaking and all of its parts until this MOA expires or is terminated. With the implementation of these stipulations, the SHPO concurs that any potential adverse effects of the Undertaking upon these resources have been taken into account.

STIPULATIONS

The U.S. Navy shall ensure that the following stipulations are implemented:

1. Archaeological data recovery efforts shall take place at Sites: GMI-2, GMI-4 and RR-14 prior to these properties being transferred out of Navy ownership. The Navy will work with the SHPO to develop appropriate Data Recovery Plans for these sites to mitigate adverse effects. Copies of the reports on the findings from the Data Recovery efforts shall be provided to SHPO for review and acceptance as sufficient. SHPO reviews shall be completed within thirty (30) calendar days of receipt of Data Recovery Plans and Reports and on the implementation of Data Recovery Plans. If the SHPO fails to respond in writing within the 30 days, it may be presumed that the SHPO has no comments on the plans or documentation. As such, the findings will be considered as complete allowing the Navy to proceed with transfer of parcels. If comments are

received from the SHPO within 30-days transfer of the parcels containing sites GMI-2, GMI-4 and RR-14 will not occur until the final reports implementing the Data Recovery Plans are complete or the two parties agree that end of field reports and notes allow transfer to proceed with proposed timeline and dates for Final Reports.

2. Surveys to attempt to locate and determine the eligibility of sites Ceiba 5 and Ceiba 6 and surveys to evaluate sites Ceiba 1, Ceiba 3, Ceiba 9, Ceiba 10, Ceiba 11 and RR-12, shall be conducted and the findings submitted to the SHPO. If Navy/SHPO determine that sites are not eligible as outlined in 36 CFR 800.4(c) for the NRHP, the sites will be immediately available for disposal. In the event that any of these sites are determined NRHP eligible, the Navy will work with the SHPO to develop Data Recovery Plans to mitigate adverse effects to these sites. Copies of the reports on the findings from the Data Recovery efforts shall be provided to SHPO for review and comment. SHPO reviews shall be completed within thirty (30) calendar days of receipt of Evaluation Testing Reports, Data Recovery Plans and Reports on the Data Recovery Plans. If the SHPO fails to respond in writing within the 30 days, it may be presumed that the SHPO has no comments on the documentation, and that the Navy may proceed with the transfer of parcels without objection. If comments are received from the SHPO within 30-days transfer of the parcels containing NRHP eligible sites will not occur until the final reports implementing the Data Recovery Plans are complete or the two parties agree that field efforts and notes allow transfer to proceed.

3. Copies of the previously prepared reports and photographic documentation on architectural resources specified in Exhibit C shall be provided to the SHPO and DNER prior to transfer of the parcels containing this property.

4. Upon application for the PBC by DNER, the U.S. Navy will provide DNER with a copy of this MOA, details of the archaeological sites Ceiba 2, Ceiba 4, RR-1, RR-3, RR-4, RR-5, RR-6, RR-7, RR-8, RR-16, RR-17, RR-20, and GMI-3 and responsibilities for the protection of these resources in consultation with the SHPO.

5. The US Navy shall insure that all archaeological materials and copies of field notes, photographs, maps, etc will be housed in an archaeological curation facility that meets the standards outlined in 36CFR79. It is recognized that at the time of this MOA being signed by all parties, there is no federally approved archaeological repository located in the Commonwealth of Puerto Rico that is prepared to accept this collection. Therefore,

the Navy will identify an approved repository for the archaeological collection and notify the SHPO in writing of the location and points of contact.

AMENDMENTS AND TERMINATION

1. Pursuant to 36 C.F.R. § 800.6(c)(7) only signatory parties (U.S. Navy and SHPO) to this MOA may request that it be amended, whereupon the parties shall consult to consider such an amendment. Consulting parties shall be notified of any such amendments.
2. If the U.S. Navy determines that it cannot implement the terms of this MOA, or if the SHPO determines that the MOA is not being properly implemented, the U.S. Navy or the SHPO may propose to the other party that it be terminated.
3. Termination shall include the submission of any outstanding documentation on any work done up to and including the date of termination.
4.  A party proposing to terminate this MOA shall notify the other party to the MOA, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination.
5. Should such consultation fail and the MOA be terminated, the U.S. Navy shall comply with 36 C.F.R. § 800.6(c)(8) by either executing another memorandum of agreement with the signatories under 36 CFR 800.6(c)(1) or request the comments of the ACHP under 36 C.F.R. § 800.7(a).
6. Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Navy shall consult with such party to resolve the objection. If the Navy determines that such objection cannot be resolved, the Navy will:
 - A. Forward all documentation relevant to dispute, including the Navy's proposed resolution, to the ACHP. The ACHP shall provide the Navy with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Navy shall prepare a written response that takes into account any timely advice or comments

regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The Navy will then proceed according to its final decision.

B. If the ACHP does not provide its advise regarding the dispute within the thirty (30) day time period, the Navy may make a final decision on the dispute and proceed accordingly. Prior to making such a final decision, the Navy shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

C. The Navy's responsibility to carry out all other actions subject to the terms of this MOA that are not subject of the dispute remain unchanged.

DURATION

 This MOA will continue in full force and effect until transfer of the Property has been fully completed or no later than September 30, 2009, which ever comes first. Prior to transfer, all Data Recovery Plans will be fully implemented.

EXECUTION

Execution of this MOA by the U.S. Navy and the SHPO and its submission to the ACHP in accordance with 36 C.F.R. § 800.6(b)(1)(iv), shall, pursuant to 36 C.F.R. § 800.6(c), be considered to be an agreement with the SHPO and the ACHP for the purposes of Section 110(1) of the NHPA. Execution and submission of this MOA evidence that the U.S. Navy has afforded the ACHP an opportunity to comment on the Undertaking and any potential adverse effects on architectural and archeological resources within the Property, and that the U.S. Navy has taken into account any potential adverse effects of the Undertaking on such resources.

SIGNATORY PARTIES:

U.S. NAVY

By: James E Anderson Date: 23 January 2007

PUERTO RICO STATE HISTORIC PRESERVATION OFFICER

By: [Signature] Date: 23 January 2007

CONSULTING PARTIES THAT CONCUR:

LOCAL REDEVELOPMENT AUTHORITY

By: [Signature] Date: 23 January 2007

DEPARTMENT of NATURAL and ENVIRONMENTAL RESOURCES

By: [Signature] Date: 2/1/07

LIST OF EXHIBITS

- Exhibit A: Sitemap Identifying Archaeological Sites, Areas to be retained by the Federal Government, and Planning Zones for Disposal Property
- Exhibit B: List of National Register Eligible Structures and Facilities
- Exhibit C: Architectural Resource Documentation to be Provided
- Exhibit D: List of Archaeological Sites Status and Planned Action